

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Raul SIANCAS individually and on behalf of all  
others similarly situated,

Plaintiffs,

*-against-*

**No. 14-cv-6151 (JS)(SIL)**

Rallye Motors, LLC, Rallye Motors Holding LLC,  
Rallye Leasing, Inc., Rallye Glen Cove, LLC, Rallye  
Northern, LLC, Rallye Roslyn, LLC, Rallye Roslyn  
Holding, LLC, Rallye Westbury, LLC, and Exclusive  
Detailing, Inc.

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE  
CERTAIN AFFIRMATIVE DEFENSES OF THE RALLYE DEFENDANTS PURSUANT  
TO FED. R. CIV. P. 12(f)**

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## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	3
PROCEDURAL BACKGROUND.....	3
1. THE COURT MAY STRIKE DEFENSES THAT ARE INSUFFICIENT AS A MATTER OF LAW, OR DO NOT QUALIFY AS “AFFIRMATIVE DEFENSES.” .....	3
2. THE RALLYE DEFENDANTS’ 7 <sup>TH</sup> DEFENSE IS NOT AN “AFFIRMATIVE DEFENSE.” .....	4
3. THE RALLYE DEFENDANTS’ 2 <sup>ND</sup> , 3 <sup>RD</sup> , 4 <sup>TH</sup> , 5 <sup>TH</sup> , 8 <sup>TH</sup> , 20 <sup>TH</sup> AND 21 <sup>ST</sup> DEFENSES FAIL AS A MATTER OF LAW .....	5
1.1. “Laches” (2 <sup>nd</sup> Defense) is Not Available in This Case Because the FLSA and the New York Labor Law Contain a Statute of Limitations.....	5
1.2. Plaintiffs Cannot Waive Rights Under The FLSA or NYLL (3 <sup>rd</sup> and 20 <sup>th</sup> Defenses). .....	6
1.3. Estoppel (4 <sup>th</sup> Defense) is Inapplicable to FLSA Claims.....	6
1.4. “Unclean Hands” (5 <sup>th</sup> Defense) is an Equitable Defense and Therefore Immaterial to this Case. .....	7
1.5. “Proximate Cause” (8 <sup>th</sup> Defense) is Inapplicable to Claims for Overtime under the FLSA and the NYLL. ....	7
1.6. Plaintiffs Have No Duty To Mitigate Damages Under the FLSA (21 <sup>st</sup> Defense). .....	8
CONCLUSION.....	9

## **PRELIMINARY STATEMENT**

Plaintiff submits this memorandum of law in support of his motion for an order striking certain affirmative defenses raised by the Defendants Rallye Motors, LLC, Rallye Motors Holding LLC, Rallye Leasing, Inc., Rallye Glen Cove, LLC, Rallye Northern, LLC, Rallye Roslyn, LLC, Rallye Roslyn Holding, LLC, and Rallye Westbury, LLC (“Rallye Defendants”), pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. Specifically, the Plaintiff requests that the Rallye Defendants’ 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> Affirmative Defenses be stricken.

## **PROCEDURAL BACKGROUND**

On October 21, 2014 Plaintiff filed this action to remedy violations of the Fair Labor Standards Act (FLSA) 29 U.S.C. §201 et seq. and the New York Labor Law Article 19, §§ 650 et seq. ECF Doc. 1; a copy of the Complaint is annexed as Exhibit 1 to the Declaration of James Fenton in Support of this Motion to Strike. On February 5, 2015 the Rallye Defendants filed their answer to the complaint. ECF Doc. 43; a copy of Answer is annexed as Exhibit 2 to the Fenton Declaration. Included in Rallye Defendants’ answer were certain affirmative defenses which should be stricken under Rule 12(f) of the Federal Rules of Civil Procedure. For the reasons stated below, Plaintiff now moves to strike such defenses.

## **ARGUMENT**

### **1. The Court May Strike Defenses that are Insufficient as a Matter of Law, or Do Not Qualify as “Affirmative Defenses.”**

Fed. R. Civ. P. 12(f) states, “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” This Court, and courts in this circuit have held that a defense should be stricken, “where the defense is clearly insufficient as a matter of law,” *Resolution Trust Corp. v. Gregor*, 1995 U.S. Dist. LEXIS 22032,

2, 1995 WL 931093 (E.D.N.Y. Sept. 29, 1995), or where defenses, “do not qualify as affirmative defenses.” *Hallmark v. Cohen & Slamowitz, LLP*, 2014 U.S. Dist. LEXIS 67985, 13 (W.D.N.Y. May 16, 2014). Further, “[i]ncreased time and expense of trial may constitute sufficient prejudice to warrant striking an affirmative defense.” *McCaffery v. McCaffery*, 2012 U.S. Dist. LEXIS 111651, 17, 2012 WL 3260299 (E.D.N.Y. Aug. 8, 2012) (quoting *Coach, Inc. v. Kmart Corps.*, 756 F. Supp. 2d 421, 2010 WL 4720325, at \*2 (S.D.N.Y. 2010)). “The Court evaluates the sufficiency of the defense based solely upon the face of the pleading.” *FTC v. Instant Response Sys., LLC*, 2014 U.S. Dist. LEXIS 17148, 4, 2014-1 Trade Cas. (CCH) P78,682 (E.D.N.Y. Feb. 11, 2014)

## **2. The Rallye Defendants’ 7<sup>th</sup> Defense Is Not An “Affirmative Defense.”**

“An affirmative defense is defined as a defendant’s assertion raising new facts and arguments that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all allegations in the complaint are true.” *Saks v. Franklin Covey Co.*, 316 F.3d 337, 350 (2d Cir. 2003). In *Hallmark*, the Defendants asserted affirmative defenses denying that they violated the FDCPA.

The court Observed:

Should Defendants ultimately prove any or all of these defenses as to any of Plaintiffs’ claims, it would necessarily follow that Plaintiffs would be unable to prove such claims, thereby establishing these defenses are not affirmative defenses...Accordingly, these defenses do not qualify as affirmative defenses and should be stricken.

*Hallmark v. Cohen & Slamowitz, LLP*, 2014 U.S. Dist. LEXIS at 12-13.

The Rallye Defendants’ 7<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> defenses (Exhibit 2, pages 11-13) are not “affirmative defenses,” but instead “seek to negate Plaintiffs’ claims, rather than seek to preclude liability should Plaintiffs prove all elements of their claims.” *Hallmark* at 12.

The 7<sup>th</sup> defense is as follows:

SEVENTH DEFENSE

114. Plaintiff and/or the putative class members were not employees of the Rallye Defendants.<sup>1</sup>

If all of the allegations in the complaint are proven as true, then each of this “defense” would fail. Indeed proving employment is a necessary element of an FLSA claim. Therefore, it follows that the 7<sup>th</sup> defense cannot be an “affirmative defense”, and should be stricken.

**3. The Rallye Defendants’ 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Defenses Fail as a Matter of Law**

“Where a defense is insufficient as a matter of law, the defense should be stricken to eliminate the delay and unnecessary expense from litigating the invalid claim.” *Fed. Deposit Ins. Corp. v. Eckert Seamans Cherin & Mellott*, 754 F. Supp. 22, 23 (E.D.N.Y. 1990) (finding the extra costs and delay in bringing the case to trial sufficient reason to strike a defense).

**1.1. “Laches” (2<sup>nd</sup> Defense) is Not Available in This Case Because the FLSA and the New York Labor Law Contain a Statute of Limitations.**

The Rallye Defendants’ 2<sup>nd</sup> defense (Exhibit 2, page 10), is as follows:

SECOND DEFENSE

109. The Complaint is barred, in whole or in part, by the equitable doctrine of laches and/or acquiescence.

The doctrine of laches is inapplicable to a statutory claim for relief where the statute contains a statute of limitations. *Ivani Contracting Corp. v. City of New York*, 103 F.3d 257, 259 (2d Cir. 1997). Because the Fair Labor Standards Act and the New York Labor Law both contain a statute of limitations, the laches defense is unavailable to a FLSA defendant as a matter of law. *Kaur v. Royal Arcadia Palace, Inc.*, 643 F. Supp. 2d 276,289 (E.D.N.Y. 2007); *Torres v. Gristede’s Operating Corp.*, 628 F. Supp. 2d 447, 464 (S.D.N.Y. 2008).

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<sup>1</sup> For ease of reading, when quoting the Rallye Defendants’ Answer verbatim, courier font is used.

**1.2. Plaintiffs Cannot Waive Rights Under The FLSA or NYLL (3<sup>rd</sup> and 20<sup>th</sup> Defenses).**

The Rallye Defendants' 3rd defense (Exhibit 2, page 10), as well as its 20<sup>th</sup> defense (Exhibit 2, page 13), are as follows:

THIRD DEFENSE

110. The Complaint is barred, in whole or in part, by the equitable doctrine of waiver.

TWENTIETH DEFENSE

127. The claims of Plaintiff and/or the putative class members are barred in whole or in part because Plaintiff and/or the putative class members consented to the pay system that is the subject of the Complaint.

However as a matter of law, a Plaintiff's rights under the FLSA are not waivable.

*Barentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 744, 101 S. Ct. 1437, 67 L. Ed. 2d 641 (1981); *see also Torres v. Gristede's Operating Corp.*, 628 F. Supp. 2d 447, 464 (S.D.N.Y.).

“FLSA rights cannot be abridged by contract or otherwise waived because this would ‘nullify the purposes’ of the statute and thwart the legislative policies it was designed to effectuate.”

*Barentine* at 740 (citing *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697, 707 (1945)).

In *Cava v. Tranquility Salon & Day Spa, Inc.*, 2014 U.S. Dist. LEXIS 21411, \*14 this Court struck an affirmative defense relating to a prior contractual relationship between the parties, finding that any prior contract could not, “bar Plaintiff’s claim that Defendants failed to pay her statutorily required minimums.” Similarly, in this case, any acceptance of payment or other contractual relationship between the Plaintiff and Defendant cannot serve to bar the Plaintiff’s claim. Therefore this defense fails as a matter of law and should be stricken.

**1.3. Estoppel (4<sup>th</sup> Defense) is Inapplicable to FLSA Claims.**

Rallye Defendants 4<sup>th</sup> defense (Exhibit 2, page 10), is as follows:

FOURTH DEFENSE

111. The Complaint is barred, in whole or in part, by the doctrine of res judicata and the equitable doctrine of estoppel.

However, the Second Circuit has deemed the doctrine of estoppel inconsistent with the language and policy of the FLSA. *Torres*, at 464 (*citing Caserta v. Home Lines Agency, Inc.*, 273 F.2d 943,946 (2d Cir. 1959)).

**1.4. “Unclean Hands” (5<sup>th</sup> Defense) is an Equitable Defense and Therefore Immaterial to this Case.**

The Rallye Defendants’ 5<sup>th</sup> defense (Exhibit 2, pages 10-11), is based upon the doctrine of unclean hands:

FIFTH DEFENSE

112. The Rallye Defendants allege that some or all of the claims asserted in the Complaint may be barred by the equitable doctrine of unclean hands and/or after-acquired Case evidence, or in the alternative these doctrines cut off or reduce Plaintiff's and/or the putative class members' damages.

This defense also fails as a matter of law. “It is black-letter law that unclean hands is an equitable defense. As such, it can only be asserted with respect to equitable – not legal – claims.” *Uto v. Job Site Servs., Inc.*, 269 F.R.D. 209, 213 (E.D.N.Y. 2010) (internal quotations and citations omitted). This defense is therefore immaterial to a claim for unpaid overtime under the FLSA and the NYLL and should be stricken.

**1.5. “Proximate Cause” (8<sup>th</sup> Defense) is Inapplicable to Claims for Overtime under the FLSA and the NYLL.**

The Rallye Defendants’ 8<sup>th</sup> defense (Exhibit 2, page 11) states that “the Rallye Defendants have not proximately caused any of the damages alleged in the Complaint.” Plaintiff

cannot find any case law in which proximate cause is considered relevant to an overtime claim under the FLSA or the NYLL. Therefore, this defense should be stricken.

**1.6. Plaintiffs Have No Duty To Mitigate Damages Under the FLSA (21<sup>st</sup> Defense).**

The Rallye Defendants' 21<sup>st</sup> defense (Exhibit 2, page 14) is as follows:

**TWENTY-FIRST DEFENSE**

128. Plaintiff and the putative class members have failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Complaint, if any.

However, an employee has no duty to mitigate overtime damages.

Courts have found that as a matter of law “there is no requirement to mitigate overtime wages under the FLSA. *King v. ITT Educ. Servs., Inc.*, No. 3:09-cv-848, 2009 U.S. Dist. LEXIS 99725, 2009 WL 3583881, at \*3 (M.D. Fla. Oct. 27, 2009); *see also Gonzalez v. Spears Holdings, Inc.*, No. 09-60501-CV, 2009 U.S. Dist. LEXIS 72734, 2009 WL 2391233, at \*3 (S.D. Fla. July 31, 2009) (granting a motion to strike mitigation-of-damages affirmative defense because there is no duty to mitigate damages under the FLSA, nor a duty to provide notice as to any alleged unlawful practice); *Lopez v. Autoserve LLC*, No. 5 C 3554, 2005 U.S. Dist. LEXIS 29161, 2005 WL 3116053, at \*2 (N.D. Ill. Nov. 17, 2005) (granting a motion to strike mitigation-of-damages affirmative defense because there is no duty to mitigate damages under the FLSA); *Perez-Nunez v. North Broward Hosp. Dist.*, No. 008-61583-CIV, 2009 U.S. Dist. LEXIS 25557, 2009 WL 723873, at \*2 (S.D. Fla. Mar. 13, 2009) (granting motion to strike the mitigation-of-damages affirmative defense and holding that a duty-to-mitigate-damages defense based on the plaintiff’s failure to timely disclose alleged violations to her employer so that the terms of her employment could be corrected failed as a matter of law under the FLSA).

*Tran v. Thai*, 2010 U.S. Dist. LEXIS 133130, 22-23, 2010 WL 5232944 (S.D. Tex. Dec. 16, 2010).

This Court has held mitigation defenses, “wholly immaterial” in the context of an action for overtime under the FLSA, and has stated that they “suggest a duty that is not applicable to Plaintiff.” *Cava v. Tranquility Salon & Day Spa, Inc.*, 2014 U.S. Dist. LEXIS 21411, \*14. Because the plaintiffs in this case were under no duty to mitigate overtime damages, the defense fails as a matter of law.

## CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests an order striking the Rallye Defendants' 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> Affirmative Defenses pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Dated: February 25, 2015  
Glen Cove, New York

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